

REMARKS/ARGUMENTS

New Grounds of Rejection, Finality of Office Action

The examiner indicated in Final Office Action dated December 05, 2008 was made final because new ground of rejection was necessitated by the applicant's amendment.

The applicant has previously clarified the claims to recite "...for which up-to-date versions are to be downloaded" in claims 1, 35, and 42. Such amendment raised no new matter and no new issues since subject matter in the amendment dated 8/27/2008 is subject matter that the examiner should have known to have searched during prosecution of this application. Further, such clarification on the "version" to be downloaded should have been reasonably expected.

Thus, no new issues were presented in the amendment dated 08/27/2008, and the Office Action dated 12/05/2009 should not have been made FINAL. The applicant earnestly seeks to vacate finality of the Office Action dated 12/05/2009, and seeks entry of the currently proposed amendment.

Claim 34

Claim 34 is noted on the Office Action Summary sheet as being rejected. Claim 34, however, was not discussed with respect to the basis it was rejected on. Clarification is earnestly requested. If Claim 34 contains allowable subject matter, please kindly indicate so.

35 USC 103(a) Rejection

Claims 1, 2, 4, 7, 8, 10, 11, 15, 16, 19, 20, 22-24, 26-30, 33, 35-37, and 41 were rejected under 35 U.S.C. § 103(a) as being obvious over Matyas Jr. et al. (U.S. Patent No. 7,051,211) in view of Huang (U.S. Patent No. 6,553,375). The applicant respectfully disagrees for the reasons discussed below. The applicant also hereby makes amendments to the claims in view of the Examiner's comments. Applicant respectfully submits that the amendments to the claims traverse this rejection.

The 35 U.S.C. §103(a) states the following:

“(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The Cited References, Combined or Individually, Do Not Disclose Every Limitation

The amended claim 1 recites the following limitations:

“A method for downloading up-to-date versions of selected plurality of different software from a plurality of software vendors over a network and for installing the up-to-date versions of selected plurality of software to a hardware unit, the network comprising a first software handling machine configured to execute a download manager, a second software handling machine configured to execute a download supervisor and a plurality of download servers for downloading the up-to-date versions of selected plurality of software from the plurality of vendors, the method comprising:

associating, by said download manager, a transaction identifier with selection data indicating the selected plurality of different software for which said up-to-date versions of selected plurality of software are to be downloaded, said selection data being determined at the time of sale of the hardware unit, and wherein said selected plurality of different software includes a plurality of software that were pre-configured into the hardware unit at or before the time of sale of the hardware unit;

sending a download transaction request comprising the transaction identifier from the download manager to the download supervisor; and

responsive to determining, by the download supervisor, that the requested download transaction is authorized, performing the steps of:

assembling, by the download supervisor, a download/installation instruction comprising up-to-date software access information for the selected plurality of different software;

communicating the download/installation instruction from the download supervisor to the download manager; and

performing, by the download manager, a download and installation of the up-to-date versions of selected plurality of different software to the hardware unit pursuant to the download/installation instruction.

Without conceding the propriety of the asserted combination, however, Applicant respectfully submits that the asserted combination does not disclose at least the aforementioned feature of claim 1, for at least the following reason.

The cited reference Matyas does not disclose **a method to download and install the up-to-date versions of selected plurality of different software, and where the selected plurality of different software includes a plurality of software that were pre-configured into the hardware unit at or before the time of sale of the hardware unit.** Further, Matyas does not disclose **selection data being determined at the time of sale of the hardware unit.** Accordingly, the currently amended claim 1 is patentable over the cited references. Thus, all dependent claims depending thereupon are also patentable.

Matyas relates to digital rights management. It discusses downloading of a single software from a single source, determined at the time of the sale of the single software. Downloading of that single software as disclosed in Matyas is not dependent on sale of any hardware unit, as it is claimed in the current claims.

Further, Matyas is silent on downloading a plurality of different software from a plurality of sources, where these plurality of software includes software pre-installed onto the hardware unit at or before the time of sale of the hardware unit (as claimed).

Huang was cited for its alleged disclosure of downloading up-to-date versions of selected software, other than the aforementioned feature. Applicant respectfully submits that Huang does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency.

Also, Applicant respectfully submits that one of ordinary skill would not have been motivated to combine Matyas with Huang.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 1 under 35 U.S.C. § 103 are respectfully requested.

As for claim 2, the currently amended claim 2 recites a transaction identifier that comprises a serial number of the hardware unit. This is clearly not disclosed by Matyas nor taught by Huang, as Matyas relates to digital rights of a single copy of software, and has nothing to do with a serial number of a hardware unit.

Further, rejection to claim 2 which is dependent on claim 1 is moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 2 under 35 U.S.C. § 103 are respectfully requested.

As for claim 4, the currently amended claim 4 recites a first software handling machine comprising the hardware unit, and wherein said selected plurality of different software includes a plurality of software that are added on after the time of sale of the hardware unit. This is clearly not disclosed by Matyas nor taught by Huang, as Matyas relates to digital rights of a single copy of software, and has nothing to do with a plurality of different software.

Further, rejection to claim 4 which is dependent on claim 1 is moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 4 under 35 U.S.C. § 103 are respectfully requested.

As for claims 7, 8, 10, 11, 15, 16, 19, 20, 22, 23, these claims are dependent on claim 1 (claim 7 depends from claim 2 which depends from claim 1), thus rejections to these claims are moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 7, 8, 10, 11, 15, 16, 19, 20, 22, 23 under 35 U.S.C. § 103 are respectfully requested.

As for claim 24, the currently amended claim 24 recites the step of interrogating the hardware unit to obtain information regarding the plurality of software that were pre-configured into the hardware unit at or before the time of sale of the hardware unit. This is clearly not disclosed by Matyas nor taught by Huang, as Matyas relates to digital rights of a single copy of software, and has nothing to do with the time of sale of a hardware unit, or software pre-configured into a hardware unit.

Further, rejection to claim 24 which is dependent on claim 1 is moot in view of the arguments for claim 1 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 24 under 35 U.S.C. § 103 are respectfully requested.

As for claim 26, this claim depends from claim 1, thus rejection to this claim is moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 26 under 35 U.S.C. § 103 are respectfully requested.

As for claims 27 and 28, the currently amended claim 27 (and claim 28 depends from claim 27) recites a software access information comprising a plurality of authentication codes for activating or downloading said up-to-date versions of selected plurality of different software from a plurality of software vendors. This is clearly not disclosed by Matyas nor taught by Huang, as Matyas relates to digital rights of a single copy of software that uses a single encryption method, and has nothing to do downloading a plurality of up-to-date versions of different software.

Further, rejection to claims 27 and 28 which are dependent on claim 1 is moot in view of the arguments for claim 1 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 27 and 28 under 35 U.S.C. § 103 are respectfully requested.

As for claims 29, 30, and 33, these claims are dependent on claim 1, thus rejections to these claims are moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 29, 30, and 33 under 35 U.S.C. § 103 are respectfully requested.

As for claim 35, the currently amended claim 35 recites the following:

A system for downloading software to a hardware unit from a plurality of vendors over a network, the system comprising:

a plurality of software vendor download servers in the network for providing up-to-date versions of selected plurality of software from the plurality of software vendors;

a first software handling machine in the network and linked to the hardware unit, the first software handling machine executing a download manager, the download manager initiating a download/installation transaction comprising selected plurality of software to be downloaded to the hardware unit from the plurality of download servers, sending a transaction identifier in a download transaction request to a download supervisor over the network, and downloading and installing the selected plurality of software to the hardware unit pursuant to a download/installation instruction received in response to the download transaction request, said selected plurality of software being determined at the time of sale of the hardware unit; and

a second software handling machine in the network executing the download supervisor, the download supervisor determining whether the download transaction request is authorized, and, in response to determining that the transaction is authorized, assembling a download/installation instruction comprising up-to-date software access information for the selected plurality of software and to send the download/installation instruction to the download manager;

wherein the first software handling machine linked to the hardware unit by an external bus, and wherein the download manager executes upon detecting that the hardware unit is linked to the first software handling machine by said external bus.

Without conceding the propriety of the asserted combination, however, Applicant respectfully submits that the asserted combination does not disclose at least the aforementioned feature of claim 35, for at least the following reasons.

The cited reference Matyas does not disclose **a download manager initiating a download/installation transaction comprising selected plurality of software to be downloaded to the hardware unit from the plurality of download servers.** Further, Matyas does not disclose **selected plurality of software being determined at the time of sale of the hardware unit.** Even furthermore, Matyas does not disclose the step of **assembling a download/installation instruction comprising up-to-date software access information for the selected plurality of software.** Accordingly, the currently amended claim 35 is patentable over the cited references. Thus, all dependent claims depending thereupon are also patentable.

As discussed above, Matyas relates to digital rights management. It discusses downloading of a single software from a single source, determined at the time of the sale of the single software. Downloading of that single software as disclosed in Matyas is not dependent on sale of any hardware unit, as it is claimed in the current claims.

Further, Matyas is silent on downloading a plurality of different software from a plurality of sources, where this plurality of software was determined at the time of sale of the hardware unit (as claimed).

Huang was cited for its alleged disclosure of providing updated version of software to a handheld device, other than the aforementioned feature. Applicant respectfully submits that Huang does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency.

Also, Applicant respectfully submits that one of ordinary skill would not have been motivated to combine Matyas with Huang.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 35 under 35 U.S.C. § 103 are respectfully requested.

As for claim 36, the currently amended claim 36 recites a software access information to comprise a plurality of authentication codes for a plurality of encryption methods to download from a plurality of download servers. This is clearly not disclosed by Matyas nor taught by Huang, as Matyas relates to digital rights of a single copy of software, and has nothing to do with the time of sale of a hardware unit, or software pre-configured into a hardware unit.

Further, rejection to claim 36 which is dependent on claim 35 is moot in view of the arguments for claim 1 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 36 under 35 U.S.C. § 103 are respectfully requested.

As for claims 37 and 41, claims 37 and 41 are dependent on claim 35, thus rejections to these claims are moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 37 and 41 under 35 U.S.C. § 103 are respectfully requested.

Rejections to Claims 3, 5, 6, 9, 39, and 42-45

Claims 3, 5, 6, 9, 39, and 42-45 were rejected under 35 U.S.C. § 103(a) as being obvious over Matyas Jr. et al. (U.S. Patent No. 7,051,211) in view of Dacosta et al.(U.S. Patent Publication No. 2002/0120725). The applicant respectfully disagrees for the reasons discussed below. The applicant also hereby makes amendments to the claims in view of the Examiner's comments. Applicant respectfully submits that the amendments to the claims traverse this rejection.

Without conceding the propriety of the asserted combination, however, Applicant respectfully submits that the asserted combination does not disclose at least the aforementioned features of claim 3, 5, 6, 9, 39, and 42-45, for at least the following reasons.

As for claims 3, 5, 6, 9, these claims are dependent on claim 1, and DaCosta was cited for its alleged disclosure of providing a website address and a boot loader. Applicant respectfully submits that DaCosta does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency to claim 1. Thus, rejections to these claims are moot in view of the arguments to claim 1 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 3, 5, 6, 9, under 35 U.S.C. § 103 are respectfully requested.

As for claim 39, the currently amended claim 39 recites a software access information comprising a plurality of authentication codes to activating a plurality of software and a network address for downloading software. This is clearly not disclosed by Matyas nor taught by DaCosta, as Matyas relates to digital rights of a single copy of software, and has nothing to do with the time of sale of a hardware unit, or software pre-configured into a hardware unit.

Further, rejection to claim 39 which is dependent on claim 35 is moot in view of the arguments for claim 35 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claim 39 under 35 U.S.C. § 103 are respectfully requested.

As for claim 42, the currently amended claim 42 recites the following limitations:

A hardware unit to execute a download manager capable of downloading and installing up-to-date versions of selected plurality of software from a plurality of software vendors download servers in a network, comprising:

means to initiate the download manager during a boot sequence of the hardware unit;

means to provide a transaction identifier and software selection data indicating the selected plurality of software for which up-to-date versions are to be downloaded to a download supervisor in the network to enable the download supervisor to identify and validate the download transaction, said software selection data being determined at the time of sale of the hardware unit;

means to receive a communication from the download supervisor comprising a download/installation instruction that includes up-to-date software access information for the selected plurality of software of the download transaction; and

means to perform the download and installation of the up-to-date versions of the selected plurality of software to the hardware unit according to the download/installation instruction.

The cited reference Matyas does not disclose **means to provide a transaction identifier and software selection data indicating the selected plurality of software.** Further, Matyas does not disclose **up-to-date software access information for the selected plurality of software.** Even furthermore, Matyas does not disclose **means to perform the download and installation of the up-to-date versions of the selected plurality of software.** Accordingly, the currently amended claim 42 is patentable over the cited references. Thus, all dependent claims depending thereupon are also patentable.

As discussed above, Matyas relates to digital rights management. It discusses downloading of a single software from a single source, determined at the time of the sale of the single software.

Further, Matyas is silent on downloading a plurality of different software from a plurality of sources, where a selection data is determined at the time of sale of the hardware unit (as claimed).

DaCosta was cited for its alleged disclosure of means to initiate the download manager during a boot sequence of the hardware unit. Applicant respectfully submits that DaCosta does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency.

Also, Applicant respectfully submits that one of ordinary skill would not have been motivated to combine Matyas with DaCosta.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 42 under 35 U.S.C. § 103 are respectfully requested.

As for claims 43-45, these claims are dependent on claim 42, thus rejections to these claims are moot in view of the arguments above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 43-45 under 35 U.S.C. § 103 are respectfully requested.

Rejections to Claims 12-14, 21 and 53

Claims 12-14, 21 and 53 were rejected under 35 U.S.C. § 103(a) as being obvious over Matyas Jr. et al. (U.S. Patent No. 7,051,211) in view of Gulliver et al. U.S. Patent Publication No. 2004/0054597). The applicant respectfully disagrees for the reasons discussed below. The applicant also hereby makes amendments to the claims in view of the Examiner's comments. Applicant respectfully submits that the amendments to the claims traverse this rejection.

Without conceding the propriety of the asserted combination, however, Applicant respectfully submits that the asserted combination does not disclose at least the aforementioned features of claim 12-14, 21 and 53, for at least the following reasons.

As for claims 12-14, 21, these claims are dependent on claim 1, thus rejections to these claims are moot in view of the arguments for claim 1 above.

Gulliver was cited for its alleged disclosure of an automatic launching step and a computer kiosk. Applicant respectfully submits that Gulliver does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency in claim 1, and claim 11.

Also, Applicant respectfully submits that one of ordinary skill would not have been motivated to combine Matyas with Gulliver.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 12-14, 21, under 35 U.S.C. § 103 are respectfully requested.

As for claims 53, this claim is dependent on claim 35, thus rejection to claim 53 is moot in view of the arguments for claim 35 above.

Gulliver was cited for its alleged disclosure of a computer kiosk. Applicant respectfully submits that Gulliver does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency in claim 35.

Also, Applicant respectfully submits that one of ordinary skill would not have been motivated to combine Matyas with Gulliver.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 53, under 35 U.S.C. § 103 are respectfully requested.

Rejections to Claims 25, 33 and 40

Claims 25, 33, and 40 were rejected under 35 U.S.C. § 103(a) as being obvious over Matyas Jr. et al. (U.S. Patent No. 7,051,211). The applicant respectfully disagrees for the reasons discussed below. The applicant also hereby makes amendments to the claims in view of the Examiner's comments. Applicant respectfully submits that the amendments to the claims traverse this rejection.

As for claims 25, 33 these claims are dependent on claim 1, thus rejections to these claims are moot in view of the arguments for claim 1 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 25, 33, under 35 U.S.C. § 103 are respectfully requested.

As for claims 40, this claim is dependent on claim 35, thus rejection to claim 40 is moot in view of the arguments for claim 35 above.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 40, under 35 U.S.C. § 103 are respectfully requested.

Rejections to Claims 31 and 32

Claims 31 and 32 were rejected under 35 U.S.C. § 103(a) as being obvious over Matyas Jr. et al. (U.S. Patent No. 7,051,211) in view of Kato et al. (USPN 6,470,469). The applicant respectfully disagrees for the reasons discussed below. The applicant also hereby makes amendments to the claims in view of the Examiner's comments. Applicant respectfully submits that the amendments to the claims traverse this rejection.

Without conceding the propriety of the asserted combination, however, Applicant respectfully submits that the asserted combination does not disclose at least the aforementioned features of claim 31, 32, for at least the following reasons.

As for claims 31 and 32 these claims are dependent on claim 1, thus rejections to these claims are moot in view of the arguments for claim 1 above.

Kato was cited for its alleged disclosure of a transaction hold status. Applicant respectfully submits that Kato does not add anything to the disclosure of Matyas that would remedy the aforementioned deficiency in claim 1.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejections of claims 31 and 32 under 35 U.S.C. § 103 are respectfully requested.

Patent Examiners Should Interpret Claims in Light of Specification

The court has recently indicated that the PTO should apply the principles of *Phillips v. AWH* during prosecution — rather than the PTO's current practice of giving claims their "broadest reasonable interpretation." *In re Johnston* (Fed. Cir. 2006). The Patent Office may use a dictionary in defining the patent applicant's claim terms only when the patent specification did not otherwise provide any interpretation.

Request For Allowance

Claims 1-16, 19-37, 39-45, and 53 are pending in this application. The applicant expresses his gratitude to the Examiner for the courtesies extended to Applicant's undersigned representative throughout prosecution of this application. In view of the foregoing, Applicant respectfully submits that the independent claims patentably define the present invention over the citations of record. Further, the dependent claims should also be allowable for the same reasons as their respective base claims and further due to the additional features that they recite. Separate and individual consideration of the dependent claims is respectfully requested. Favorable consideration is respectfully requested.

Respectfully submitted,
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